

MEMORANDUM FOR: General Counsel

FROM: Harry E. Fitzwater  
Deputy Director for Administration

SUBJECT: Revision of Executive Order 12065,  
"National Security Information"

REFERENCE: ISOO's Redraft of the Interagency Working  
Group's Final Revision of Executive Order  
12065

We have reviewed from an Agency standpoint the ISOO redraft of Executive Order 12065, and we find it unacceptable. Below are section-by-section, comments on the provisions of the ISOO version. Where we have no comment, either ISOO has adopted the interagency version word for word or we have no preference for one version over the other.

1. Page 1, Preamble

Prefer the interagency working group (IWG) version, with its emphasis on safeguarding, plus the addition of the last sentence of the ISOO version.

2. Page 1, Section 1-101 and 102

Prefer ISOO version for clarity.

3. Page 2, Section 1-103

Substitute second sentence of IWG 1-101 for this entire section. ISOO version again reduces emphasis on safeguarding. It also is less clear and includes an unnecessary requirement for original classification authority.

4. Page 3, Section 1-201 thru 205

Prefer ISOO version, primarily for clarity.

5. Page 7, Section 1-301

Substitute IWG 1-301 for this entire section, in particular the "jeopardy" and "protective mission" criteria.

6. Page 8, Section 1-302

Prefer ISOO version for brevity.

7. Page 8, Section 1-303

Substitute IWG 1-301<sup>303</sup> for this entire section. The ISOO version does not include cryptologic information or intelligence information, and limits confidential sources to being foreign.

8. Page 8, Section 1-304

Prefer ISOO version for broader terminology.

9. Page 9, Section 1-401

Prefer ISOO version for brevity.

10. Page 9, Section 1-402 and 403

Substitute IWG 1-402 for both entire sections. The ISOO version is the opposite of the IWG position.

11. Page 9, Section 1-501

Substitute IWG 1-501 for this entire section, but in (b) change "Declassify Upon Notification of Originator" to "Declassify Upon Notification by Originator". The parenthetical expression in (a) and (b) of the ISOO version must appear in the main paragraph of 1-501 in order to cover all markings.

12. Page 10, Section 1-502

Substitute IWG 1-503 for this entire section. The ISOO version allows only D/ISOO, rather than agency heads, to approve portion-marking waivers. The Agency has requested seven waivers from ISOO under E.O. 12065; six were turned down with no reason given.

13. Page 11, Section 1-503

Drop entire section. The Agency should not relinquish its authority to ISOO in this matter.

14. Page 11, Section 1-601

Substitute IWG 1-601 for this entire section. The first sentence, dropped in ISOO version, gives wrong emphasis.

15. Page 12, Section 2-101 and 102

Prefer ISOO version for definition of derivative classification in 2-101, and for "most restrictive" wording in 2-102(b).

16. Page 13, Section 2-201 thru 203

Substitute IWG 2-201 and 202 for these entire sections. ISOO version makes classification guides mandatory and would require that all classifiable information be covered by guides.

17. Page 15, Section 3-103

Drop entire section, which is essentially the same as Section 3-104 of E.O. 12065. This provision was dropped, appropriately, by the interagency working group.

18. Page 16, following Section 3-202

Add IWG 3-203, which emphasized the requirement that GSA follow agency guidelines.

19. Page 16, Section 3-301 and 302

Substitute IWG 3-301 thru 3-303, in which the emphasis is on the authority of agency heads in establishing systematic review programs. In addition, if time periods must be specified, fifty years is too short a period for cryptologic and intelligence information.

20. Page 19, Section 3-401(b)

Substitute IWG 3-401(b). The ISOO version diminishes the requirement for specificity by requesters under mandatory review. (The definition for "information" in Section 6-102 does not serve the same purpose.)

21. Page 20, Section 3-403 and 404

Substitute IWG 3-403 and 404. The ISOO version of 3-403 puts unnecessary emphasis on release of segregable portions. Also, 3-404 adds time limits on responding to mandatory review requests; these time limits were dropped, appropriately, by the interagency working group.

22. Page 22, Section 4-101

Substitute IWG 4-101, particularly the last sentence concerning agency heads maintaining minimum investigative standards.

23. Page 22, Section 4-<sup>102</sup>402  
Prefer ISOO version for brevity.
24. Page 23, Section 4-201  
Substitute IWG 4-201. ISOO version leaves out DCI authority for establishing common SCI standards.
25. Page 24, Section 4-202 thru 204  
Drop entire sections. These provisions were dropped, appropriately, by the interagency working group.
26. Page 25, Section 4-301 and 302  
Substitute IWG version of 4-301 and 302 for emphasis on agency discretion.
27. Page 27, Section 5-202(c)  
Drop entire section, since we recommend dropping 3-103 to which this refers.
28. Page 27, Section 5-202(e)  
Drop entire section, which appears to be an attempt by ISOO to levy reporting requirements on agencies without the normally required interagency coordination and approval by GSA/NARS and OMB.
29. Page 27, Section 5-202(g)  
Drop entire section. This gives ISOO unnecessary authority over agency systematic review programs.
30. Page 28, Section 5-202(j)  
Substitute IWG 5-202(f) for emphasis on the protective purposes of this order. Add the substance of the last three sentences from ISOO 5-202(j), which gives agency heads the authority to deny access.
31. Page 29, Section 5-301(b)  
Prefer ISOO version which limits regulations published in the Federal Register to those affecting the public.
32. Page 31, Section 5-405  
Substitute IWG 5-405. The notification of D/ISOO is not necessary.

33. Page 33, Section 6-106

Substitute IWG 6-106. We prefer "pertaining to" to "affecting", since we need to protect the source whether or not his information has an immediate affect on the national security.

34. Page 33, Section 6-202

Substitute IWG 6-202 which is identical to 6-202 of E.O. 12065. We can see no reason for ISOO to omit "his duly designated representative".

35. Page 34, Section 6-204

We suggest that the effective date be changed to 1982.

Harry E. Fitzwater

STAT DDA/OIS/RMD/RSB/ [redacted] kw (7 October 1981)

Distribution:

Original-Addressee

2-DDA

2-OIS

1-RSB Subject: E.O. 12065

1-RSB Chrono

STAT

TRANSMITTAL SLIP		DATE
		8 Oct. 1981
ROOM NO.	BUILDING	
REMARKS:		
<p>Attached is the          ISOO redraft of E.O.          12065 with our          Comments. OGC will          meet with NSC and          ISOO Oct 13 to work          out differences. [redacted]          [redacted] says that OGC          will push for their          version —</p>		
FROM [redacted]		
ROOM NO.	BUILDING	EXTENSION

FORM NO.  
1 FEB 55 241

REPLACES FORM 36-8  
WHICH MAY BE USED.

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